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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

Zurich American Insurance Company

Plaintiff,

v.

Asphalt Paving Systems, Inc.

Defendant.

Civil Action No.: 1:22-cv-01535

**ANSWER TO AMENDED COMPLAINT
WITH SEPARATE DEFENSES AND
JURY DEMAND**

ANSWER TO AMENDED COMPLAINT

Defendant Asphalt Paving Systems, Inc. ("APS") for its answer to Plaintiff Zurich American Insurance Company's ("Zurich") amended complaint says as follows:

I. NATURE OF ACTION

1. Admitted that Zurich asserts breach of contract and insurance fraud claims in this action but that remainder of the paragraph is denied.
2. Denied.
3. Denied.

II. PARTIES

4. APS is without sufficient knowledge or information to form a belief as to the veracity of the allegations of this paragraph and therefore denies the same.

5. Admitted.

III. JURISDICTION AND VENUE

6. Admitted.

7. Admitted.

IV. BACKGROUND FACTS

8. Admitted.

9. Admitted that Zurich provided insurance to APS during the referenced timeframes, the terms of which policies speak for themselves.

The Business Automobile Policies

10. Admitted.

11. Admitted

12. Admitted

13. Admitted

14. Admitted

15. Denied as stated, the terms of the policies speak for themselves and are improperly characterized by Zurich.

The Policy Premium

16. Denied as stated, the terms of the policies speak for themselves and are improperly characterized by Zurich.

17. Denied as stated, the terms of the policies speak for themselves and are improperly characterized by Zurich.

18. Denied as stated, the terms of the policies speak for themselves and are improperly characterized by Zurich.

19. Denied as stated, the terms of the policies speak for themselves and are improperly characterized by Zurich.

20. Denied as stated, the terms of the policies speak for themselves and are improperly characterized by Zurich.

The 2020-2021 Policy Year

21. Denied.

22. Denied.

23. Admitted that Zurich issued an endorsement and the referenced invoice to APS for \$1,779,735 but the remaining allegations of the paragraph, including APS's liability to Zurich for that sum are denied.

The Misrepresentations

24. Denied.

25. Denied.

26. Denied.

27. Denied.

28. Denied.

29. Denied.

30. Denied.

31. Denied.

The Claims

- 32. Denied.
- 33. Denied.
- 34. Denied.
- 35. Denied
- 36. Denied.

COUNT ONE
BREACH OF CONTRACT – POLICY BAP 0191409-05
(Failure to Pay Premium Invoice)

37. APS repeats its responses to all prior paragraphs as if set-forth at length herein.

- 38. Denied.
- 39. Denied.
- 40. Denied.
- 41. Denied.
- 42. Admitted
- 43. Denied.

WHEREFORE, Defendant Asphalt Paving Systems, Inc. demands judgment dismissing Plaintiff Zurich American Insurance Company's amended complaint together with attorney's fees, costs of suit and such other relief as the Court may deem just and proper.¹

¹ Zurich assigned numbered paragraph to its prayers for relief. APS omits numerical paragraph that are actually prayers for relief.

COUNT TWO
BREACH OF CONTRACT – POLICY BAP 0191409-00
(Underreporting of Exposure)

45. APS repeats its responses to all prior paragraphs as if set-forth at length herein.

46. This paragraph constitutes a conclusion of law to which no response is required. To the extent a response is required, same is denied.

47. Denied.

48. Denied.

49. Denied.

50. Denied.

51. Denied

WHEREFORE, Defendant Asphalt Paving Systems, Inc. demands judgment dismissing Plaintiff Zurich American Insurance Company's amended complaint together with attorney's fees, costs of suit and such other relief as the Court may deem just and proper.

COUNT THREE
BREACH OF CONTRACT – POLICY BAP 0191409-01
(Underreporting of Exposure)

53. APS repeats its responses to all prior paragraphs as if set-forth at length herein.

54. This paragraph constitutes a conclusion of law to which no response is required. To the extent a response is required, same is denied.

55. Denied.

56. Denied.

57. Denied.

58. Denied.

59. Denied.

WHEREFORE, Defendant Asphalt Paving Systems, Inc. demands judgment dismissing Plaintiff Zurich American Insurance Company's amended complaint together with attorney's fees, costs of suit and such other relief as the Court may deem just and proper.

COUNT FOUR
BREACH OF CONTRACT – POLICY BAP 0191409-02
(Underreporting of Exposure)

61. APS repeats its responses to all prior paragraphs as if set-forth at length herein.

62. This paragraph constitutes a conclusion of law to which no response is required. To the extent a response is required, same is denied.

63. Denied.

64. Denied.

65. Denied.

66. Denied.

67. Denied.

WHEREFORE, Defendant Asphalt Paving Systems, Inc. demands judgment dismissing Plaintiff Zurich American Insurance Company's amended complaint together with attorney's fees, costs of suit and such other relief as the Court may deem just and proper.

COUNT FIVE
BREACH OF CONTRACT – POLICY BAP 0191409-04
(Underreporting of Exposure)

69. APS repeats its responses to all prior paragraphs as if set-forth at length herein.

70. This paragraph constitutes a conclusion of law to which no response is required. To the extent a response is required, same is denied.

71. Denied.

72. Denied.

73. Denied.

74. Denied.

75. Denied.

WHEREFORE, Defendant Asphalt Paving Systems, Inc. demands judgment dismissing Plaintiff Zurich American Insurance Company's amended complaint together with attorney's fees, costs of suit and such other relief as the Court may deem just and proper.

COUNT SIX
BREACH OF CONTRACT – POLICY BAP 0191409-05
(Underreporting of Exposure)

77. APS repeats its response to all prior paragraphs as if set-forth at length herein.

78. This paragraph constitutes a conclusion of law to which no response is required. To the extent a response is required, same is denied.

79. Denied.

80. Denied.

81. Denied.

82. Denied.

83. Denied.

WHEREFORE, Defendant Asphalt Paving Systems, Inc. demands judgment dismissing Plaintiff Zurich American Insurance Company's amended complaint together with attorney's fees, costs of suit and such other relief as the Court may deem just and proper.

COUNT SEVEN
COMMON LAW FRAUD
(Fraudulent Inducement by Misrepresenting Number of Owned Autos)

85-92. Dismissed by Court. See Doc. 36.

COUNT EIGHT
NEW JERSEY INSURANCE FRAUD PREVENTION ACT
N.J. STAT. ANN. § 17:33A-7
(Misrepresenting Number of Owned Autos)

93. APS repeats its responses to all prior paragraphs as if set-forth at length herein.

94. Denied.

95. Denied.

96. Denied.

97. Denied.

98. Denied.

99. Denied.

WHEREFORE, Defendant Asphalt Paving Systems, Inc. demands judgment dismissing Plaintiff Zurich American Insurance Company's amended complaint together with attorney's fees, costs of suit and such other relief as the Court may deem just and proper.

COUNT NINE
UNJUST ENRICHMENT
(Underreporting of Exposure)

101. APS repeats its responses to all prior paragraphs as if set-forth at length herein.

102. Denied.

103. Denied.

104. Denied.

105. Denied.

WHEREFORE, Defendant Asphalt Paving Systems, Inc. demands judgment dismissing Plaintiff Zurich American Insurance Company's amended complaint together with attorney's fees, costs of suit and such other relief as the Court may deem just and proper.

COUNT TEN
BREACH OF THE IMPLIED DUTY OF
GOOD FAITH AND FAIR DEALING
(Concealment and Misrepresentations)

107. APS repeats its responses to all prior paragraphs as if set-forth at length herein.

108. Admitted.

109. Denied.

110. Denied.

111. Denied.

WHEREFORE, Defendant Asphalt Paving Systems, Inc. demands judgment dismissing Plaintiff Zurich American Insurance Company's amended complaint together with attorney's fees, costs of suit and such other relief as the Court may deem just and proper.

SEPARATE DEFENSES

1. Zurich's amended complaint fails to state a claim upon which relief can be granted.
2. Zurich's amended complaint is barred by the doctrine of waiver.
3. Zurich's amended complaint is barred by the doctrine of unclean hands.
4. Zurich's amended complaint is barred by the doctrine of laches.
5. Zurich's amended complaint is barred by the doctrine of estoppel.
6. Zurich's amended complaint is barred by its failure to mitigate its damages.
7. Zurich's amended complaint is barred by the doctrine of mistake.

JURY DEMAND

APS demands a trial by jury on all issues so triable.

**HANKIN SANDMAN PALLADINO
WEINTROB & BELL, P.C.**

By: /s/ John F. Palladino
John F. Palladino, Esquire

By: /s/ Colin G. Bell
Colin G. Bell, Esquire
*Attorneys for Defendants
Asphalt Paving Systems, Inc.*

Dated: February 1, 2023